

## REMARKS

Claims 1-28 are pending in the application. In an Office Action mailed July 20, 2004, (hereinafter "Office Action") the specification was objected to for the presence of several typographical errors contained therein. Claims 1-28 were rejected under 35 U.S.C. § 103(a). The specification and Claims 1, 2, 11, 12, 16, 17, and 25-28 have been amended and Claims 4-6, 13-15, 18, 19, and 21 canceled by way of this amendment and response. In view of the amendments and remarks that follow, applicants respectfully submit that the application is now in condition for allowance.

### Objection to the Specification

The specification was objected to for the abstract contained a typographical error on page 6, line 18, wherein the reference numeral "40" was inadvertently used instead of the correct reference numeral "42." Appropriate correction has been made. The abstract of the disclosure was objected to because it inadvertently contained the word "disclosed." Appropriate correction has been made. Accordingly, applicants respectfully request that the objection to the specification be withdrawn.

### Rejections Under 35 U.S.C. § 103(a)

Claims 1-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,112,095 issued to Lund et al. (hereinafter "Lund") in view of U.S. Patent No. 5,165,751 issued to Matsumoto et al. (hereinafter "Matsumoto"), and with regard to Claims 7 and 24, also in view of U.S. Patent No. 4,810,022 issued to Takagi et al. (hereinafter "Takagi"). Applicants respectfully disagree as discussed below.

### Rejection of Claims 1-3, 8-10, 16, and 26 Under 35 U.S.C. § 103(a)

As is well known, the Office Action bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. To establish *prima facie* obviousness of a claimed

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants assert that neither Lund or Matsumoto teach or suggest an "actuator assembly [that] is adapted to vertically move the deflector panel independently from rotating the deflector panel" as recited in independent Claim 1 and as similarly recited in independent Claims 16 and 26.

More specifically, Matsumoto teaches an air spoiler that is moveable forwardly and rearwardly, and which is rotated when transitioned between its folded front position and its raised rear position. However, Matsumoto does not teach a deflector panel that can be vertically moved independently from rotating the deflector panel. In contrast, Matsumoto teaches raising and rotating the air spoiler along a predefined path, that is not adjustable. The path is defined by the configuration of the guide groove 29 (See Figure 1 of Matsumoto). Thus, the height of the air spoiler of Matsumoto cannot be independently adjusted. Raising the height of the air spoiler results in rotation of the air spoiler. Therefore, the air spoiler is restricted to a predetermined inclination associated with a selected height, since the height of the air spoiler is not independently adjustable of the inclination of the air spoiler. Accordingly, an operator is not able to selectively position the air spoiler in an ideal position.

Likewise, Lund fails to teach or suggest an "actuator assembly [that] is adapted to vertically move the deflector panel independently from rotating the deflector panel" as recited in Claim 1 and as similarly recited in Claims 16 and 26. Lund teaches a vehicle shield device that is selectively rotatable, but which is not adjustable in height. Thus, Lund, like Matsumoto, does not teach or suggest an actuator assembly that can vertically move the deflector panel independently from rotating the deflector panel.

Accordingly, applicants submit that neither Matsumoto, nor Lund, individually or in combination, teach or suggest all the claim limitations of Claims 1, 16 and 26. Accordingly,

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claims 1, 16, and 26, and those claims which depend thereon, be withdrawn.

Rejection of Claim 11 Under 35 U.S.C. § 103(a)

Applicants assert that neither Lund or Matsumoto teach or suggest "an actuator assembly coupled to the deflector panel, the actuator assembly adapted to selectively displace the deflector panel substantially in a fore and aft direction relative to the vehicle and independently in a substantially vertical direction" as recited in Claim 11.

More specifically, Matsumoto teaches an air spoiler that is moveable forwardly and rearwardly, and which is rotated when transitioned between its folded front position and its raised rear position. However, Matsumoto does not teach a deflector panel that can be displaced in a fore and aft direction and independently in a substantially vertical direction. In contrast, Matsumoto teaches raising and rotating the air spoiler along a predefined path that is not adjustable. The path is defined by the configuration of the guide groove 29 (See Figure 1 of Matsumoto). Thus, the height of the deflector panel of Matsumoto cannot be independently adjusted without resulting in fore and aft movement of the air spoiler. Therefore, raising the height of the air spoiler results in the air spoiler being placed in a predetermined fore and aft location associated with that height, since the height of the deflector panel is not independently adjustable of the fore and aft location of the deflector panel.

Likewise, Lund fails to teach or suggest "an actuator assembly coupled to the deflector panel, the actuator assembly adapted to selectively displace the deflector panel substantially in a fore and aft direction relative to the vehicle and independently in a substantially vertical direction" as recited in Claim 11. Lund teaches a vehicle shield device that is selectively rotatable, but which is not adjustable in a fore and aft direction. Thus Lund, like Matsumoto,

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

does not teach or suggest an actuator assembly that can vertically raise the deflector panel independently from moving the deflector panel in a fore and aft direction.

Accordingly, applicants submit that neither Matsumoto, nor Lund, individually or in combination, teach or suggest all the claim limitations of Claim 11. Accordingly, applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 11 be withdrawn.

Rejection of Claims 12 and 28 Under 35 U.S.C. § 103(a)

Applicants assert that neither Lund or Matsumoto teach or suggest a "controller operable to automatically control the actuator assembly to adjust the position of the deflector panel in a vertical, horizontal, and rotational manner independently of one another based upon a sensed speed of the vehicle" as recited in Claim 12, and similarly recited in Claim 28.

More specifically, Matsumoto teaches an air spoiler that is moveable forwardly and rearwardly, and which is rotated when transitioned between its folded front position and its raised rear position. However, Matsumoto does not teach a controller operable to automatically control the configuration of the deflector panel in a vertical, horizontal, and rotational manner independently of one another. In contrast, Matsumoto teaches raising and rotating the air spoiler along a non-adjustable path, the path defined by the configuration of the guide groove 29 (See Figure 1 of Matsumoto). Thus, the height of the air spoiler of Matsumoto cannot be raised without resulting in fore and aft movement and rotational movement of the air spoiler. Therefore, the air spoiler is restricted to a predetermined height and a predetermined angular orientation associated with each fore and aft position of the air spoiler, since the height, fore and aft position, and angular orientation of the air spoiler are not independently adjustable.

Likewise, Lund fails to teach or suggest a "controller operable to automatically control the actuator assembly to adjust the position of the deflector panel in a vertical, horizontal, and rotational manner independently of one another based upon a sensed speed of the vehicle" as

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

recited in Claim 12, and as similarly recited in Claim 28. Lund teaches a vehicle shield device that is selectively rotatable, but which is not adjustable in height or in its fore and aft position. Therefore, Lund, like Matsumoto, does not teach or suggest a controller that can independently adjust the height, fore and aft location, and angular orientation of a deflector panel.

Accordingly, applicants submit that neither Matsumoto, nor Lund, individually or in combination, teach or suggest all the claim limitations of Claims 12 and 28. Accordingly, applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claims 12 and 28 be withdrawn.

Rejection of Claims 17, 20, 22-25 Under 35 U.S.C. § 103(a)

Applicants assert that neither Lund or Matsumoto teach or suggest "automatically adjusting an inclination and a height of the deflector panel independently of one another based upon the sensed speed of the vehicle" as recited in Claim 17.

More specifically, Matsumoto teaches an air spoiler that is moveable forwardly and rearwardly, and which is rotated when transitioned between its folded front position and its raised rear position. However, Matsumoto does not teach or suggest automatically adjusting an inclination and a height of the deflector panel independently of one another based upon the sensed speed of the vehicle. In contrast, Matsumoto teaches lowering and rotating the air spoiler along a non-adjustable path, the path defined by the configuration of the guide groove 29 (See Figure 1 of Matsumoto), when the stabilizing effect of the spoiler fin becomes unnecessary. Thus, Matsumoto does not teach automatically adjusting an inclination and a height of the deflector panel independently of one another since Matsumoto teaches tying the inclination of the air spoiler to the height of the air spoiler such that every height is associated with a pre-defined angular orientation of the air spoiler. Thus, the air spoiler of Matsumoto cannot be raised without resulting in a change in the inclination of the air spoiler. Therefore, the air spoiler

is restricted to a predetermined angular orientation for each height of the air spoiler, since the height of the air spoiler is not independently adjustable of the inclination of the air spoiler.

Likewise, Lund fails to teach or suggest "automatically adjusting an inclination and height of the deflector panel independently of one another based upon the sensed speed of the vehicle" as recited in Claim 17. Lund teaches a vehicle shield device that is selectively rotatable by manual means, but which is not adjustable in height. Therefore, Lund, like Matsumoto, does not teach or suggest automatically adjusting an inclination and a height of the deflector panel independently of one another based upon the sensed speed of the vehicle.

Accordingly, applicants submit that neither Matsumoto, nor Lund, individually or in combination, teach or suggest all the claim limitations of Claim 17. Accordingly, applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 17, and any claims dependent thereon, be withdrawn.

Rejection of Claim 27 Under 35 U.S.C. § 103(a)

Applicants assert that neither Lund or Matsumoto teach or suggest a "deflector panel independently adjustable in a fore and aft direction and in inclination relative to the vehicle while the vehicle is moving" as recited in Claim 27.

More specifically, Matsumoto teaches an air spoiler that is moveable forwardly and rearwardly, and which is rotated when transitioned between its folded front position and its raised rear position. However, Matsumoto does not teach or suggest a "deflector panel independently adjustable in a fore and aft direction and in inclination relative to the vehicle while the vehicle is moving." In contrast, Matsumoto teaches a deflector plate moveable along a non-adjustable path, the path defined by the configuration of the guide groove 29 (See Figure 1 of Matsumoto), such that any change in inclination of the air spoiler results in movement in a fore and aft direction of the air spoiler since rotation of the air spoiler is directly tied to the movement

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

of the air spoiler in the fore and aft direction. Thus, Matsumoto does not teach a deflector panel independently adjustable in a fore and aft direction and in inclination relative to the vehicle while the vehicle is moving since Matsumoto teaches tying the inclination of the air spoiler to the movement of the air spoiler in a fore and aft direction. Simply stated, the air spoiler of Matsumoto cannot be inclined without resulting in a change in the inclination of the air spoiler. Therefore, the air spoiler is restricted to a predetermined angular orientation for each fore and aft position of the air spoiler, since the fore and aft position of the air spoiler is not independently adjustable of the inclination of the air spoiler.

Likewise, Lund fails to teach or suggest a "deflector panel independently adjustable in a fore and aft direction and in inclination relative to the vehicle while the vehicle is moving" as recited in Claim 27. Lund teaches a vehicle shield device that is selectively rotatable by manual means and which is not adjustable in a fore and aft direction. Therefore, Lund, like Matsumoto, does not teach or suggest a deflector panel independently adjustable in a fore and aft direction and in inclination relative to the vehicle while the vehicle is moving.

Accordingly, applicants submit that neither Matsumoto, nor Lund, individually or in combination, teach or suggest all the claim limitations of Claim 27. Accordingly, applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 27 be withdrawn.

Rejection of Claim 7 Under 35 U.S.C. § 103(a)

As stated above, Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsumoto in view of Lund and Takagi. For at least the same reasons as discussed above for Claim 1, which Claim 7 depends, applicants submit that Matsumoto and Lund, individually or in combination, fail to teach each every element of Claim 7. Further, applicants assert that Takagi also fails to teach or suggest at least the same limitations not taught or suggested by Matsumoto and Lund.

More specifically, as discussed above, Matsumoto and Lund both fail to at least teach or suggest an actuator assembly that is "adapted to vertically move the deflector panel independently from rotating the deflector panel." Like Matsumoto and Lund, Takagi also fails to teach or suggest at least these same limitations. Moreover, referring to Figures 3A and 3B of Takagi, Takagi teaches a rear spoiler fin 202 that is formed in a recess 104 of a trunk lid of a vehicle. The front edge of the rear spoiler fin 202 is pivotably attached within the recess and can be tilted up to form an air flow guide surface (See col. 5, line 66 to col. 6, line 46 of Takagi). Although Takagi teaches the rotating of the spoiler fin, Takagi fails to at least teach or suggest vertically moving the spoiler fin, and therefore cannot be said to teach or suggest an actuator assembly for vertically moving the deflector independently from rotating the deflector panel. Thus, Takagi, like Matsumoto and Lund, fails to at least teach or suggest an actuator assembly that is "adapted to vertically move the deflector panel independently from rotating the deflector panel."

Accordingly, applicants submit that neither Matsumoto, Lund, nor Takagi, individually or in combination, teach or suggest all the claim limitations of Claim 7. Accordingly, applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 7 be withdrawn.

Rejection of Claim 24 Under 35 U.S.C. § 103(a)

As stated above, Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsumoto in view of Lund and Takagi. For at least the same reasons as discussed above for Claim 17, which Claim 24 depends, applicants submit that Matsumoto and Lund, individually or in combination, fail to teach each every element of Claim 24. Further, applicants assert that Takagi also fails to teach or suggest at least the same limitations not taught or suggested by Matsumoto and Lund.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100



More specifically, as discussed above, Matsumoto and Lund both fail to at least teach or suggest "automatically adjusting an inclination and a height of the deflector panel independently of one another based upon the sensed speed of the vehicle." Like Matsumoto and Lund, Takagi also fails to teach or suggest at least these same limitations. Moreover, referring to Figures 3A and 3B of Takagi, Takagi teaches a rear spoiler fin 202 that is formed in a recess 104 of a trunk lid of a vehicle. The front edge of the rear spoiler fin 202 is pivotably attached within the recess and can be tilted up to form an air flow guide surface (See col. 5, line 66 to col. 6, line 46 of Takagi). Although Takagi teaches the rotating of the spoiler fin, Takagi fails to at least teach or suggest vertically moving the spoiler fin, and therefore cannot be said to teach or suggest automatically adjusting an inclination and a height of the deflector panel independently of one another based upon the sensed speed of the vehicle. Thus, Takagi, like Matsumoto and Lund, fails to at least teach or suggest a method including "automatically adjusting an inclination and a height of the deflector panel independently of one another based upon the sensed speed of the vehicle."

Accordingly, applicants submit that neither Matsumoto, Lund, nor Takagi, individually or in combination, teach or suggest all the claim limitations of Claim 24. Accordingly, applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 24 be withdrawn.

Rejection of Claims 4-6, 13-15, 18, 19, and 21 Under 35 U.S.C. § 103(a)

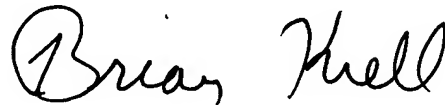
With regard to Claims 4-6, 13-15, 18, 19, and 21, applicants note that these claims have been canceled by way of this amendment and response, and therefore the 35 U.S.C. § 103(a) rejection of these claims is now moot.

### CONCLUSION

In view of the foregoing remarks and amendments, applicants respectfully submit that the present application is in condition for allowance. Reconsideration and reexamination of the application, as amended, and allowance of the claims at an early date is solicited. If the Examiner has any questions or comments concerning this matter, the Examiner is invited to contact applicants' undersigned attorney at the number below.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Brian D. Krell  
Registration No. 51,899  
Direct Dial No. 206.695.1638

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: September 28, 2008 W. Beath

BDK:bdk

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100